

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

FILED
04 AUG 11 PM 2:06

U.S. DISTRICT COURT
N.D. OF ALABAMA

STEPHEN PAUL HARP,

Plaintiff,

v.

**COLE LUMPKIN, an individual,
ERIC ROEBUCK, an individual,
CHIEF RICHARD CROUCH, an
individual; and THE CITY OF
GADSDEN, a municipal corporation,**

Defendants.

CV-04-PT-2454-M

**Removed from the Circuit Court of
Etowah County, Alabama**

CV-04-736-D

NOTICE OF REMOVAL

COME NOW Defendants Cole Lumpkin ("Lumpkin"), Eric Roebuck ("Roebuck"), Chief Richard Crouch ("Crouch"), and the City of Gadsden ("Gadsden") (collectively hereafter referred to as "Defendants") and file this Notice of Removal, removing this cause to the United States District Court for the Northern District of Alabama, Middle Division. As grounds for removal, Defendants respectfully show unto the Court the following:

1. This action was filed on or about July 16, 2004 in the Circuit Court of Etowah County, Alabama and is now pending in said Court as Civil Action No. CV-04-736-D. Copies of the Summons and Complaint in Case No.: CV-04-736-D were served on Gadsden on July 26, 2004. True and correct copies of all process, pleadings, and orders filed in this action are attached hereto as Exhibit 1.

2. Pursuant to 28 U.S.C. § 1446(a), removal to this Court is proper because the Circuit Court of Etowah County is within the Northern District of Alabama, Middle Division.

3. In compliance with 28 U.S.C. § 1446(b), this removal is filed within thirty days after any defendant first received, through service or otherwise, a copy of the summons and initial pleading setting forth Plaintiff's claims for relief. Defendant Gadsden was the first defendant to receive notice of this action and Gadsden first received actual notice when it was served with a copy of the Summons and Complaint on July 26, 2004.

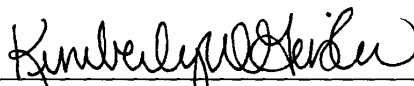
4. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Etowah County, Alabama. A copy of this Notice of Removal is also being served upon counsel for Plaintiff.

5. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. This action is removable pursuant to 28 U.S.C. § 1441(b) because the gravamen of Plaintiff's Complaint raises a federal question. Plaintiff asserts causes of action against all Defendants for assault (Count Two), unlawful restraint (Count Three), assault and battery (County Four), and negligent training (Count Five). In addition to these state law claims, Plaintiff alleges in Count One that the Defendants' conduct constituted a violation of and deprivation of certain constitutional rights secured to the Plaintiff by 42 U.S.C. § 1983. Plaintiff seeks costs and attorney's fees pursuant to 42 U.S.C. § 1988. Complaint at ¶¶ 1-8. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

6. All Defendants join in and consent to this removal.

WHEREFORE, PREMISES CONSIDERED, Defendants Lumpkin, Roebuck, Crouch, and Gadsden pray that further proceedings in the Circuit Court of Etowah County, Alabama be discontinued and that this suit be removed to The United States District Court for the Northern District of Alabama, Middle Division.

Respectfully submitted,



Carter H. Dukes
Kimberly W. Geisler
Attorneys for Defendants
City of Gadsden, Chief Richard Crouch,
Cole Lumpkin, and Eric Roebuck

OF COUNSEL:

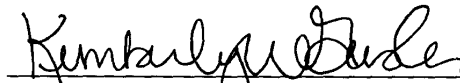
HUCKABY SCOTT & DUKES, P.C.
2100 Third Avenue North, Suite 700
Birmingham, Alabama 35203
(205) 251-2300

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon counsel of record by placing a copy of same in the United States mail, first class postage prepaid and addressed as follows:

Marcus W. Reid, Esq.
Post Office Box 2303
Anniston, Alabama 36202

DONE this the 11th day of August, 2004.


Of Counsel

State of Alabama
Unified Judicial System

SUMMONS

Case Number:

CV-04-736-DSM

Form C-34 Rev 6/88

- CIVIL -

IN THE CIRCUIT

COURT OF

ETOWAH

COUNTY

Plaintiff Stephen Paul Harp

v. Defendant

Cole Lumpkin, Eric Roebuck,
Chief Richard Crouch and
City of Gadsden

D-1

NOTICE TO Officer Cole Lumpkin, Gadsden Police Dept., 90 Broad Street,
Gadsden, AL 39501

210199

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY Marcus W. Reid WHOSE

ADDRESS IS P.O. Box 2303, Anniston, AL 36202

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN _____ DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure:

☒ You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant.

☐ Service by certified mail of this summons is initiated upon the written request of _____ pursuant to the Alabama Rules of Civil Procedure.

Date

7/16/04

Clerk/Register

By:

28

☐ Certified Mail is hereby requested.

Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____ (Date)

☐ I certify that I personally delivered a copy of the Summons and Complaint to _____ (Date)

☒ I, [Signature] in Etowah County,

Alabama on 7-26-04
(Date)

Date

7-26-04

Server's Signature

Brown

Address of Server

Type of Process Server

DS

State of Alabama
Unified Judicial System

SUMMONS

Case Number:

Form C-34 Rev 6/88

- CIVIL -

CV-04-736DSM

IN THE CIRCUIT COURT OF ETOWAH COUNTY

Plaintiff Stephen Paul Harp

v. Defendant Cole Lumpkin, Eric Roebuck,
Chief Richard Crouch and
City of Gadsden

D-2

NOTICE TO Officer Eric Roebuck, Gadsden Police Dept., 90 Broad Street,
Gadsden, AL 39501THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION
TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN
ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A
COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR
PLAINTIFF'S ATTORNEY Marcus W. Reid WHOSEADDRESS IS P.O. Box 2303, Anniston, AL 36202THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN _____ DAYS AFTER THIS SUMMONS AND COMPLAINT
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upon the defendant.☐ Service by certified mail of this summons is initiated upon the written request of
pursuant to the Alabama Rules of Civil Procedure.Date 7/16/04

Clerk/Register

By: 28☐ Certified Mail is hereby requested.

Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____
(Date)☐ I certify that I personally delivered a copy of the Summons and Complaint to _____
in _____ County,Alabama on 7-26-04
(Date)

Date

Address of Server

Server's Signature

Type of Process Server

FILED

JUL 16 2004

BILLY YATES
CLERK, CIRCUIT COURT

State of Alabama
Unified Judicial System

SUMMONS

Case Number:

Form C-34 Rev 6/83

- CIVIL -

210195

CV-04736DSH

IN THE CIRCUIT

COURT OF

ETOWAH

COUNTY

Plaintiff Stephen Paul Harp

v Defendant Cole Lumpkin, Eric Roebuck,
Chief Richard Crouch and
City of GadsdenD-3
NOTICE TO Chief Richard Crouch, Gadsden Police Dept., 90 Broad Street,
Gadsden, AL 35901THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY Marcus W. Reid WHOSEADDRESS IS P.O. Box 2303, Anniston, AL 36202

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Date

7/16/04

Clerk/Register

By:

28

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Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

- ☐ Return receipt of certified mail received in this office on _____ (Date)
- ☐ I certify that I personally delivered a copy of the Summons and Complaint to X Meshonda C. Steward in Etowah County, Alabama on 7-26-04 (Date)

Date

7-26-04

Address of Server

Server's Signature

Steward

DS

Type of Process Server

FILED

JUL 16 2004

BILLY YATES
CLERK, CIRCUIT COURT

State of Alabama
Unified Judicial System

SUMMONS

Case Number:

Form C-34 Rev 6/88

- CIVIL -

210194

CV-04-136-DSM

IN THE CIRCUIT COURT OF ETOWAH COUNTY

Plaintiff Stephen Paul Harp

v. Defendant Cole Lumpkin, Eric Roebuck,
Chief Richard Crouch and
City of GadsdenNOTICE TO City of Gadsden, 90 Broad St. Gadsden AL 35901

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY Marcus W. Reid WHOSE

ADDRESS IS P.O. Box 2303, Anniston, AL 36202

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Date

7/16/04

Clerk/Register

Billy Yates

By:

JS

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Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____ (Date)

☐ I certify that I personally delivered a copy of the Summons and Complaint to X Eva Nelson in Etowah County, Alabama on 7-26-04 (Date)

Date

7-26-04

Address of Server

Server's Signature

BWW

Type of Process Server

JS

FILED

JUL 16 2004

BILLY YATES
CLERK, CIRCUIT COURT

State of Alabama
Unified Judicial System

COVER SHEET
CIRCUIT COURT - CIVIL CASE
(Not For Domestic Relations Cases)

Case Number CV 04 736
Date of Filing: 08 11 04 *DSM*
Month Day Year

Form ARCivP-93

12/95

GENERAL INFORMATION

IN THE CIRCUIT COURT OF ETOWAH COUNTY

PLAINTIFF Stephen Paul Harp v. DEFENDANT Cole Lumpkin, et al.

First Plaintiff

☐ Business
☐ Government ☒ Individual
☐ Other

First Defendant

☐ Business
☐ Government ☒ Individual
☐ Other

NATURE OF SUIT: Select primary cause of action.

TORTS PERSONAL INJURY

- ☐ WDEA - Wrongful Death
☐ TONG - Negligence: General
☐ TOMV - Negligence: Motor Vehicle
☐ TOWA - Wantonness
☐ TOPL - Product Liability/AEMLD
☐ TOMM - Malpractice - Medical
☐ TOLM - Malpractice - Legal
☐ TOOM - Malpractice - Other
☐ TOFR - Fraud
☐ TOXX - Other: _____

- ☐ PFAB - Protection From Abuse
☐ RPRO - Real Property
☐ ACCT - Account & Non-Mortgage
☐ COXX - Contract: All other
☒ CVRT - Civil Rights
☐ WTEG - Wills/Trusts/Estates/Guardianships
☐ EQND - Non-Damage Actions (Declaratory Judgment, Injunction)
☐ MSHC - Habeas Corpus/Extraordinary Writ
☐ ADPA - Admin. Procedure Act
☐ FELA - Railroad/Seaman (FELA)
☐ COMP - Workmen's Compensation
☐ COND - Condemnation (Fruits of Crime, Rt of Way, Aband. Vehicle)
☐ CVXX - Other: _____

TORTS PROPERTY INJURY

- ☐ TOPE - Personal Property
☐ TORE - Real Property

ORIGIN (check one):

☒ INITIAL FILING

☐ APPEAL FROM
DISTRICT COURT

☐ OTHER:

FILED

ALABAMA JUDICIAL DATA CENTER
COURT PAYMENT SYSTEM

COUNTY _____
DATE OF RECEIPT: 07/21/2004 TIME: 09:59:01 RECEIPT NUMBER: 056855
RECEIVED FOR CASE: CV 2004 000736 00 BATCH: 2004217
RECEIVED FROM: MARCUS W REID

STEPHEN PAUL HARP VS COLE LUMPKIN, ET ALS

ACCOUNTS RECEIPTED:

CV00
JDMD
SERA

\$201.00
\$100.00
\$30.00

RECEIVED BY: ERS

CHECK AMOUNT

\$331.00

State of Alabama
Unified Judicial System**SUMMONS**

Case Number

CV-04-736-DSN

Form C-34 Rev 6/88

- CIVIL -IN THE CIRCUIT COURT OF ETOWAH COUNTY

Plaintiff Stephen Paul Harp

v. Defendant Cole Lumpkin, Eric Roebuck,
Chief Richard Crouch and
City of GadsdenNOTICE TO Officer Cole Lumpkin, Gadsden Police Dept., 90 Broad Street,
Gadsden, AL 39501THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY Marcus W. Reid WHOSEADDRESS IS P.O. Box 2303, Anniston, AL 36202

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Date

7/16/04

Clerk/Register

Billy YatesBy: JS

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Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

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- ☐ I certify that I personally delivered a copy of the Summons and Complaint to _____ in _____ County, Alabama on _____ (Date)

FILED

JUL 16 2004

BILLY YATES
CLERK, CIRCUIT COURT

Date

Server's Signature

Address of Server

Type of Process Server

State of Alabama
Unified Judicial System

SUMMONS

Case Number

Form C-34 Rev 6/88

- CIVIL -

CV.04-136
DSHIN THE CIRCUIT COURT OF ETOWAH COUNTY

Plaintiff Stephen Paul Harp

v. Defendant Cole Lumpkin, Eric Roebuck,
Chief Richard Crouch and
City of GadsdenNOTICE TO Officer Eric Roebuck, Gadsden Police Dept., 90 Broad Street,
Gadsden, AL 39501THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY Marcus W. Reid WHOSEADDRESS IS P.O. Box 2303, Anniston, AL 36202

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Date

7/16/04

Clerk/Register

By:

JH

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Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

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FILED

JUL 16 2004

BILLY YATES
CLERK, CIRCUIT COURT

Date

Server's Signature

Address of Server

Type of Process Server

State of Alabama
Unified Judicial System**SUMMONS**

Case Number

CV 04736 DSA

Form C-34 Rev 6/88

- CIVIL -IN THE CIRCUIT COURT OF ETOWAH COUNTY

Plaintiff Stephen Paul Harp

v. Defendant Cole Lumpkin, Eric Roebuck,
Chief Richard Crouch and
City of GadsdenNOTICE TO Chief Richard Crouch, Gadsden Police Dept., 90 Broad Street,
Gadsden, AL 35901 3THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY Marcus W. Reid WHOSEADDRESS IS P.O. Box 2303, Anniston, AL 36202

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Date

7/16/04

By: 

Clerk/Register

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Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

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- ☐ I certify that I personally delivered a copy of the Summons and Complaint to _____ in _____ Alabama on _____ (Date)

FILED

JUL 16 2004

BILLY YATES
CLERK, CIRCUIT COURT

Date

Server's Signature

Address of Server

Type of Process Server

State of Alabama
Unified Judicial System**SUMMONS**

Case Number

Form C-34 Rev 6/88

- CIVIL -CV.04-136-
DSMIN THE CIRCUIT COURT OF ETOWAH COUNTYPlaintiff Stephen Paul Harpv. Defendant Cole Lumpkin, Eric Roebuck,
Chief Richard Crouch and
City of GadsdenNOTICE TO City of Gadsden 90 Broad St. Gadsden AL
35901THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY Marcus W. Reid WHOSEADDRESS IS P.O. Box 2303, Anniston, AL 36202

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Date

7/16/04

Clerk/Registrar

By: JA

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Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

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FILED

JUL 16 2004

BILLY YATES

CLERK, CIRCUIT COURT

Date

Server's Signature

Address of Server

Type of Process Server

**IN THE CIRCUIT COURT OF ETOWAH COUNTY,
ALABAMA**

STEPHEN PAUL HARP,)

Plaintiff,)

vs.)

CASE NO.: CV-04-

736-DSM

COLE LUMPKIN an individual;)

ERIC ROEBUCK, an individual;)

CHIEF RICHARD CROUCH,)

an individual; and the CITY OF)

GADSDEN, a municipal corporation,)

Defendants.)

)

COMPLAINT

Comes now the plaintiff in the above-styled cause, by and through counsel, and for claim herein avers and says as follows:

FACTUAL ALLEGATIONS

1. The Plaintiff is an individual resident citizen of Etowah County, Alabama, over the age of 19 years and in all respects competent to prosecute this action.

2. The Defendant City of Gadsden is a municipal corporation located in Etowah County, Alabama and subject to the jurisdiction of this Court. The individual named defendants in this action are all over the age of 19 years and are subject to the jurisdiction of this Court.

3. That on or about the 27th day of July, 2002, the Plaintiff Stephen Paul Harp was physically assaulted and beaten by Gadsden police officers (Defendants) Cole Lumpkin and Eric Roebuck, and suffered serious physical injuries as a proximate consequence thereof. As a result of incidents on that date, the Plaintiff Stephen Paul Harp was charged with certain misdemeanor criminal offenses

FILED
JUL 16 2004
BILLY YATES
CLERK, CIRCUIT COURT

including Disorderly Conduct and Resisting Arrest. The Plaintiff is not guilty of any criminal offense, and the complaining party, Defendant Eric Roebuck, was well aware of the Plaintiffs' innocence of the offenses at the time the charges were filed.

4. That the aforesaid assaults and actions of the officers were completely unprovoked and unjustified as a matter of law and constituted intentional, malicious and inexcusable acts on the part of the aforesaid officers, each of whom were officers, servants and/or employees of the City of Gadsden, Alabama, at all pertinent times, and acting within the line and scope of their employment.

5. That as a proximate consequence of the said wrongful acts, the Plaintiff has been caused to suffer physical pain and suffering, as well as psychological damages, and to incur expenses in treating his injuries. Said Plaintiff has also been caused to suffer humiliation, embarrassment and mental anguish as a proximate result of the officers' outrageous conduct.

6. That the Defendant City of Gadsden and Defendant Richard Crouch failed to properly supervise, direct, train and/or control the individual officers herein, their subordinates, and as a proximate consequence thereof, Plaintiff was injured and damaged as aforesaid. Moreover, the Plaintiff avers upon information and belief that the said Defendants either formally or informally promoted, caused or authorized the acts complained of herein pursuant to an official policy or custom.

7. During all times pertinent hereto, the Defendants City of Gadsden and Richard Crouch and the Defendants herein acted under color of law, to-wit, the statutes, ordinances, customs, regulations and usages of the State of Alabama, the City of Gadsden and Etowah County. The Defendants, separately and in concert, engaged in the illegal and unconscionable conduct herein mentioned to the irreparable injury of the Plaintiff and deprived the Plaintiff of the rights, privileges and immunities secured to him by the Fourteenth Amendment to the Constitution of the United States and the laws

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JUL 16 2004
BILLY YATES
CLERK, CIRCUIT COURT

of the United States and the State of Alabama.

COUNT ONE

Plaintiff adopts, realleges, and incorporates by reference the averments of paragraphs One through Seven of the Plaintiff's Complaint as completely as if fully set out herein.

8. Plaintiff avers that the defendants' conduct alleged above constituted a violation of and the deprivation of certain rights secured to the plaintiff by 42 U.S.C. §1983, and as a proximate consequence thereof, the plaintiff was injured and damaged as aforesaid.

WHEREFORE, IN THE PREMISES, the plaintiff demands judgment of the defendants in an amount to be determined by the jury, punitive damages included, for violation of the plaintiff's rights under the Constitution of the United States of America and the State of Alabama, actionable pursuant to 42 U.S.C. §1983; plus costs of suit and attorney's fees pursuant to 42 U.S.C. §1988.

COUNT TWO

The plaintiff adopts, realleges and incorporates by reference the averments in paragraphs One through Eight of the Plaintiff's Complaint as completely as if fully set out herein.

9. That the conduct of the defendants herein constituted a civil assault upon the plaintiff, the use of verbal abuse and physical action, and the use of force and threats accompanied by an unjustifiable demand, the compliance with which would avert the threat. As a result of said conduct of the defendants, the plaintiff was injured and damaged as heretofore alleged.

WHEREFORE, IN THE PREMISES, the plaintiff demands judgment of the defendants in an amount to be determined by the jury, punitive damages included, for civil assault.

COUNT THREE

The plaintiff adopts, realleges and incorporates by reference the averments in paragraphs One through Nine of the Plaintiff's Complaint as completely as if fully set out herein.

FILED

JUL 16 2004

**BILLY YATES
CLERK, CIRCUIT COURT**

10. The defendants herein unlawfully restrained and detained the plaintiff, contrary to his will and without due process of law, with malice. As a proximate and legal consequence of said wrongful conduct, the plaintiff was injured and damaged as heretofore alleged.

WHEREFORE, IN THE PREMISES, the plaintiff demands judgment of the defendants in an amount to be determined by the jury, punitive damages included, for false arrest.

COUNT FOUR

The plaintiff adopts, relleges, and incorporates by reference the averments in paragraphs One through Nine of the Plaintiff's Complaint as completely as fully set out herein.

11. That the defendants Cole Lumpkin and Cliff Heard committed assault and battery upon the Plaintiff Stephen Paul Harp in that said defendants directed abusive and threatening words toward the plaintiff Stephen Paul Harp at the time of their physical assaults upon the plaintiff as alleged herein, and proceeded to beat the plaintiff Stephen Paul Harp about the head and body with various instruments and their fists, causing severe injuries.

12. That the conduct of said individual party defendants constituted an attempt or offer with force or violence to do a corporal hurt to the Plaintiff Stephen Paul Harp, with malice or wantonness, attendant with such circumstances at the time to denote an intention to do such acts, coupled with the ability to carry such intent to effect. The conduct of said defendants also constituted the use of excessive force and/or the touching of the plaintiff by said defendants in rudeness and/or anger.

13. That, at all times pertinent hereto, said defendants were the agents, servants or employees of defendant City of Gadsden and under the supervision of said department and on their master's business at the time of the conduct alleged herein.

14. That, as a proximate consequence of said defendants' conduct, plaintiff was injured and damaged as heretofore alleged.

FILED

JUL 16 2004

**BILLY YATES
CLERK, CIRCUIT COURT**

WHEREFORE, IN THE PREMISES, the plaintiff demands judgment of the defendants in an amount to be determined by the jury, punitive damages included, for assault and battery.


COUNT FIVE

The plaintiff adopts, realleges and incorporates by reference the averments in paragraphs One through Fourteen of the Plaintiff's Complaint as completely as if fully set out herein.

15. That the defendants herein negligently caused or allowed the conduct which resulted in plaintiff's injuries as heretofore alleged, or in the alternative, acted in conscious disregard of the known risk that such conduct and/or injuries could occur. The defendants each had an affirmative duty to ensure the health and safety of citizens in the City of Gadsden, Etowah County, Alabama and to ensure that excessive force was not used in effecting any arrest. Said defendants breached that duty by allowing persons of poor judgment and known violent propensities to continue in the position of police officer, or by allowing inadequately or incorrectly trained persons to continue in such positions, or negligently trained and/or negligently supervised said officers and as a proximate consequence thereof, the plaintiff was injured and damaged as alleged herein.

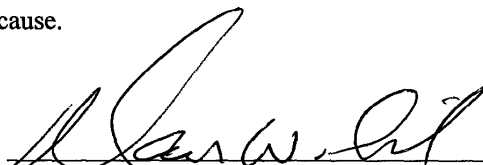
WHEREFORE, IN THE PREMISES, the plaintiff demands judgment of the defendants in an amount to be determined by the jury, punitive damaged included, for negligence and willful and wanton conduct.

Respectfully submitted,


MARCUS W. REID
Attorney for the Plaintiff
P.O. Box 2303
Anniston, AL 36202
(256) 236-1240

FILED
JUL 16 2004
BILLY YATES
CLERK, CIRCUIT COURT

Plaintiff demands trial by struck jury in this cause.


MARCUS W. REID

SERVE DEFENDANTS AT:

Chief Richard Crouch
Gadsden Police Dept.
90 Broad Street
Gadsden, AL 35901

Officer Cole Lumpkin
Gadsden Police Dept.
90 Broad Street
Gadsden, AL 35901

Officer Eric Roebuck
Gadsden Police Dept.
90 Broad Street
Gadsden, AL 35901

City Clerk
City of Gadsden
90 Broad Street
Gadsden, AL 35901

FILED

JUL 16 2004

**BILLY YATES
CLERK, CIRCUIT COURT**

AVS0351

CV 2004 000736.00

JUDGE: DAN SHAUN MALONE

ALABAMA JUDICIAL DATA CENTER
CASE ACTION SUMMARY
CIRCUIT CIVIL

IN THE CIRCUIT COURT OF ETOWAH COUNTY

STEPHEN PAUL HARP VS COLE LUMPKIN, ET ALS
FILED: 07/16/2004 TYPE: CIVIL RIGHTS TYPE TRIAL: JURY TRACK:*****
DATE1: CA: CA DATE:
DATE2: AMT: \$.00 PAYMENT:
DATE3: *****

PLAINTIFF 001: HARP STEPHEN PAUL

ATTORNEY: REID MARCUS W
REI007, AL 00000-0000
PHONE: (256)000-0000
ENTERED: 07/21/2004 ISSUED:
SERVED: ANSWERED:TYPE:
JUDGEMENT:DEFENDANT 001: LUMPKIN COLE OFFICER
GADSDEN POLICE DEPT
90 BROAD STREET
GADSDEN, AL 35901-0000
PHONE: (256)000-0000

ATTORNEY: *** PRO SE ***

ENTERED: 07/21/2004 ISSUED:
SERVED: ANSWERED:TYPE:
JUDGEMENT:DEFENDANT 002: ROEBUCK ERIC OFFICER
GADSDEN POLICE DEPT
90 BROAD STREET
GADSDEN, AL 35901-0000
PHONE: (256)000-0000

ATTORNEY: *** PRO SE ***

ENTERED: 07/21/2004 ISSUED:
SERVED: ANSWERED:TYPE:
JUDGEMENT:DEFENDANT 003: CROUCH RICHARD CHIEF
GADSDEN POLICE DEPT
90 BROAD STREET
GADSDEN, AL 35901-0000
PHONE: (256)000-0000

ATTORNEY: *** PRO SE ***

ENTERED: 07/21/2004 ISSUED:
SERVED: ANSWERED:TYPE:
JUDGEMENT:DEFENDANT 004: GADSDEN CITY OF
90 BROAD STREET
GADSDEN, AL 35901-0000
PHONE: (256)000-0000

ATTORNEY: *** PRO SE ***

ENTERED: 07/21/2004 ISSUED:
SERVED: ANSWERED:TYPE:
JUDGEMENT:

SUMMONS & COMPLAINT FILED.

ERS 07/21/2004

CV 2004 000736.00